IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.882 OF 2004

Dattu Khoba Kamble
since deceased by his legal
representatives .. Appellants

Versus

Tarabai Ramu Kamble & Ors. .. Respondents

Mr.Pratapsing Rananavare for appellants

Mr.Vijay Killedar for respndetn Nos. 2 and 3.

CORAM : P.V.KAKADE, J.

DATE : 25TH JULY, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Kolhapur dated 14.1.2004 allowing the appeal and setting aside the judgment and order passed by Civil Judge, Junior Division, Kurundwad dismissing the plaintiffs'' suit for declaration and possession of the suit property.

2. I have heard the learned counsel for both the parties. Perused the record.

3. At the outset it may be noted that there is absolutely no substantial question of law involved. The learned counsel for the appellant brought to my notice various aspects in respect of the observations made by both the courts below, however, it is to be noted that all the issues involved are issues of fact. It was submitted on behalf of the appellants that the identification of the impugned property is not clear, which can be seen from the record and as such the lower appellate court's order decreeing the suit cannot sustain in law. However, in this regard it must be noted that the lower appellate court has addressed to the issues in proper perspective noting that the defendants had absolutely no evidence to rebut the presumption raised by the revenue record, which was summoned from the Mamlatdar's office, which pertain to the year 1916 and indicated that there were two properties stood in the name of Laksha Mahar, father-in-law of the first plaintiff. First property was in the nature of an open plot while the another was

a house. No doubt that the measurements and extent of the said properties were not available, obviously, due to the reason that the record pertain to the year 1916 onwards. However, the fact remains that in absence of defendants defence in rebuttal, the evidence on record available was held to be sufficient to decree the suit. In view of this factual matrix, this court would not interfere in the appreciation of findings. It is needless to mention that time and again the Apex Court had noted that when the evidence on record is sufficient to show the possibility that two views could be taken on the available record, then in that case the view taken by the lower appellate court, last court of fact, has to be accepted and High Court would not be justified in interfering in such matters under Section 100 of C.P.C. In view of this position and the fact that the lower appellate court is seen to have appreciated the evidence in proper perspective. I am of the view that there is no interference is necessary by this Court.

4. In the result the appeal stands dismissed with no order as to costs. Consequently the Civil Application No.1031 of 2004 also stands dismissed with no order as to costs.

. Ad-interim order, if any, stands vacated.